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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : August 24th, 2007

\+ W.P.(C) 6234/2007

R.K.HOSIERY ..... Petitioner
Through Mr. Sandeep Sethi, Sr. Advocate
with Mr. P.S.Bindra, Advocate

versus

DELHI POLLUTION CONTROL COMMITTEE & ANR
..... Respondent
Through Mr. B.B.Gupta, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat: (Open Court)

1. Issue notice. Mr. B.B. Gupta accepts notice for the Delhi Pollution Control Committee, in all the cases; Mr. B.B. Gautam, Advocate accepts notice on behalf of Ms. Aruna Tiku, for the Government of NCT of Delhi. Counsel for the respondents state that they have the original files. With consent of counsel for all the parties in these petitions, these cases were heard finally.

2. In these proceedings under Article 226 of the Constitution of India, the writ petitioners' common grievance is that the Delhi Pollution Control Committee, the first respondent, withdrew authorization and permission to engage in industrial activity, in terms of The Environment Protection Act, 1986, the Air (Prevention

and Control of Pollution) Act, 1981 and the Hazardous Waste (Management and Handling) Rules, 1989.

3. The petitioners are engaged in various industrial activities, such as dyeing and bleaching. They had earlier been granted licenses and permissions, as applicable under various laws and regulations, such as the the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; the Environment Protection Act, 1986 and the Hazardous Waste (Management and Handling) Rules, 1989. The Delhi Pollution Control Committee, by impugned orders in identical terms, in almost all cases, dated 7-8-2007, intimated that such licenses, permissions and authorizations were withdrawn.

4. Mr. Sandeep Sethi, learned senior counsel submitted that the impugned orders are unsustainable, because they were not preceded with show cause notice or reasonable opportunity. If there were any deficiencies, the respondents should have notified them and given opportunities to rectify them. Instead, they unceremoniously proceeded to withdraw the licenses and permissions, under the various Acts and regulations. Such action is violative of principles of natural justice, and the court therefore, has to interfere, in exercise of judicial review powers.

5. Mr. B.B. Gupta, learned counsel for the Delhi Pollution Control Committee, justified the impugned orders. He submitted that the units of all the petitioners were inspected. Though the petitioners were not separately notified the

deficiencies existing, which amounted to violation of environmental standards prescribed by various enactments and regulations, they knew of it all times. Counsel submitted that being aware that the units were inspected, the petitioners had a duty to inform themselves about the shortcomings.

6. Learned counsel for the respondents further submitted that the question of enforcement of environmental standards is an important one and has acquired public importance. The Supreme Court had by various directions required setting of Local Area Committees, which could visit the sites and make recommendations. On the basis of information collected, the Delhi Pollution Control Committee, a statutory body created under the Environment Protection Act, determined that the cases of the petitioners, few among the 100 plus inspected by it, required to be treated immediately, calling for invocation of emergency powers. In these circumstances, prior notice or hearing was not necessary.

7. The above facts reveal that the petitioners are engaged in manufacturing activities which require environmental clearance under the Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974; the Environment Protection Act, 1986 and the Hazardous Waste (Management and Handling) Rules, 1989. Those clearances were forthcoming. The Delhi Pollution Control Committee, pursuant to inspections, said to have taken place in May, 2007, issued the impugned orders, resulting in closure or direction to close these industrial units. Indisputably, the action was not preceded

by show cause or hearing to the petitioners.

8. It is well settled that every administrative or executive order, which affects or adversely impacts on the rights of an individual, should be preceded by a fair procedure, thereby implying notice, a right to represent against the proposed action and some opportunity of hearing. The content of such right would vary from situation to situation; every case may not warrant a personal hearing. (Ref *Charan Lal Sahu vs. Union of India etc. AIR 1990 SC 1480; Gadde Venkateswara Rao vs. Govt. of A.P. & Ors* AIR 1966 SC 828; *Canara Bank and others vs. Debasis Das & Ors* 2003 (4) SCC 557). Natural justice can be dispensed with if the injury to public interest is imminent or irreversible, if it is followed. It has been held in *Liberty Oil Mills -vs- Union of India* 1984 (3) SCC 465 that the executive or public agency can seek recourse to emergency powers to prevent harm or injury to public interest wherever power exists, by making ex-parte or interim orders, interdicting the rights of individuals, pending final administrative or statutory determination.

9. In these cases, as noticed earlier, the impugned action was not preceded by any, much less rudimentary or essential hearing. The orders are admittedly final; they are not expressed to be interim measures. It may be that the petitioners were aware of inspection carried out by the respondents; that cannot lead to a presumption that they were aware of the latter's intention to issue directions for closure. Moreover, there is admittedly a considerable time lag between the inspection, carried out in May, 2007 and the impugned orders. This too, shows

prima facie that there was no such urgency or emergency, which could be termed as "imminent" injury to public interest if rules of natural justice were followed.

10. For the above reasons, the petitions are entitled to succeed. However, instead of quashing the impugned orders, I am of the opinion, having regard to the nature of the concerns expressed by the respondents, that the orders, instead of being treated as directions or orders of closure, and/or withdrawal of authorizations/ cancellations of license, they should be treated as show cause notices. The petitioners shall file their reply to such show cause notices within 3 days. The respondent Delhi Pollution Control Committee shall grant minimum opportunity of hearing to the petitioners and thereafter issue speaking orders. The entire process shall be completed within three weeks. Till then, the *status quo* as existing in respect of the petitioners' industrial units shall continue; they shall not be treated as closed units.

11. Subject to the above directions, all rights and contentions of the parties are hereby reserved. The petitions are disposed off in the above terms without any order as to costs.

Order dasti to parties.

(S.RAVINDRA BHAT)
JUDGE

August 24,2007
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